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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
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11 BLAKE MCMAHON, individually, and on
behalf of all others similarly situated,

12 Plaintiff,

13 vs.
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15 AIRCO MECHANICAL, INC., a California
Corporation; and DOES 1 to 100, inclusive,

16 Defendants.
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Case No. 34-2019-00259269

CLASS ACTION

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT

Reservation No. 2675831

Date: November 18, 2022

Time: 9:00 a.m.

Dept.: 25

Judge: Hon. Jill H. Talley

Filed: June 25, 2019

FAC Filed: September 19, 2019

SAC Filed: May 20, 2020

TAC Filed: April 23, 2021

Trial Date: None Set

FILED / ENDORSED

DEC 14 2022

By T. Shaddix, Deputy Clerk

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1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on November 18, 2022, at 9:00 a.m., in Department 25
4 before the Honorable Jill H. Talley, presiding. Named Plaintiff Blake McMahon ("Plaintiff") filed this
5 putative class action on June 25, 2019. The operative Complaint alleges that Airco Mechanical, Inc.
6 ("Defendant") violated California law by 1) failing to pay all hours worked, including overtime wages
7 and minimum wages due to alleged work off-the-clock and rounding of hours worked; 2) failing to
8 provide wage statements accurately itemizing all of the information required by Labor Code section
9 226(a); 3) failing to timely pay all final wages owed; 4) failing to provide all meal periods; 5) failing
10 to provide all rest periods; and 6) failing to maintain record of all start and end times for shifts worked
11 and meal periods. Plaintiff has also alleged Defendant is liable for civil penalties under the Private
12 Attorneys General Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs
13 as part of this Action. Defendant denied all of Plaintiff's claims and denied that this case was
14 appropriate for class treatment. No class has been certified.

15 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
16 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
17 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
18 ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
19 Agreement. The Court, having received and considered Plaintiffs' Motion for Preliminary Approval of
20 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
21 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
22 FOLLOWS:

23 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
24 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is
26 appropriate under the California Code of Civil Procedure and related case law:

27 All individuals who have, or continue to, perform work for Defendant in
28 California as a non-exempt, hourly employee from June 25, 2015, up to

1 either (i) the Preliminary Approval Date; or (ii) December 13, 2022,
2 whichever is earlier.

3 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
4 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

5 The Court finds that Class Members meet the ascertainability and numerosity requirements since
6 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
7 the definition and the number of Class Members would make joinder impractical. The commonality and
8 predominance requirements are met for settlement purposes since there are questions of law and fact
9 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
10 contentions that Defendant caused the violations outlined above by 1) failing to pay all hours worked,
11 including overtime wages and minimum wages due to alleged work off-the-clock and rounding of hours
12 worked; 2) failing to provide wage statements accurately itemizing all of the information required by
13 Labor Code section 226(a); 3) failing to timely pay all final wages owed; 4) failing to provide all meal
14 periods; 5) failing to provide all rest periods; and 6) failing to maintain record of all start and end times
15 for shifts worked and meal periods. The PAGA, waiting time penalty, and unfair competition claims
16 also derive from these violations. Additionally, Class Members seek the same remedies under state
17 law. The typicality requirement for settlement purposes is also satisfied since the claims of the Class
18 Representatives are based on the same facts and legal theories as those applicable to the class members.

19 The Court also finds that preliminarily and conditionally certifying the settlement class is
20 required to avoid each Class Member from litigating similar claims individually. This settlement will
21 achieve economies of scale for Class Members with relatively small individual claims and conserve the
22 resources of the judicial system.

23 The Court finds that Plaintiff Blake McMahon Plaintiff's counsel, Galen T. Shimoda,
24 Justin P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
25 representatives of the settlement class. The Court appoints them as Class Representative and Class
26 Counsel, respectively.

27 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

28 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of

1 a settlement, which could ultimately be given final approval by this Court. The Court also
2 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this
3 Court or opt-out of being bound by the preliminarily approved Agreement.

4 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
5 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
6 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
7 \$445,000.00 Gross Settlement Amount.

8 The Court orders that Plaintiff Blake McMahon will receive \$15,000 as a Class Representative
9 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
10 rata distribution formula for Plaintiffs' time and effort on behalf of Class Members.

11 The Court orders and approves ILYM Group, LLC to act as the Claims Administrator in this
12 case. The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to
13 exceed \$15,000. Any difference between the actual cost of the Claims Administrator and the approved
14 payment will be redistributed to Qualified Claimants on a pro-rata basis.

15 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
16 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
17 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
18 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
19 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
20 *v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
21 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
22 thirty-five percent (35%) of the Gross Settlement Amount to be appropriate compensation for Class
23 Counsel. The attorneys' fees request is within the range that has been approved by other Courts in
24 similar cases and is reasonable in light of the circumstances of this case, the substantial and beneficial
25 results obtained on behalf of Class Members, and the contingent nature of the recovery over the course
26 of this case, which included potential loss at summary judgment, certification, and/or trial proceedings.
27 Additionally, the Court orders that up to \$17,500.00 of the settlement proceeds will be paid to Class
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1 Counsel for reasonable costs incurred in this case. Any difference between the actual costs incurred and
2 the \$17,500.00 shall be paid to the Qualified Claimants on a pro-rata basis.

3 The Court approves of the Ten Thousand Dollars (\$10,000) PAGA Payment, which shall be paid
4 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
5 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
6 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
7 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
8 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
9 furthering the purpose of the Labor Code and LWDA.

10 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
11 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
12 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights. No portion of
13 the Gross Settlement Amount will revert to Defendant for any reason.

14 The releases and waivers for Class Members who do not opt out of being bound by the
15 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representatives are also
16 approved by the Court as set forth in the Agreement.

17 **III. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,
18 OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

19 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiffs'
20 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
21 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
22 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
23 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
24 hearing to be conducted on the date set forth below. The Court further finds that the Notice of
25 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
26 at his or her most recent address based on a National Change of Address database search from the Class
27 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
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1 returned as “undeliverable” or “not at this address” comports with all constitutional requirements,
2 including those of due process.

3 The Court also finds that because there is a strong interest in providing Class Members the
4 opportunity to participate in the settlement, along with the Parties’ efforts to minimize any intrusion to
5 privacy rights, the sharing of employment information, including social security numbers, is not a
6 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
7 name, last known mailing address, social security number, and hire and termination dates, total number
8 of workweeks during which the Class Member performed any actual work to the Claims Administrator
9 only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the
10 Agreement and approved by this Order. The Claims Administrator shall only use this information for
11 settlement purposes identified herein, and this information shall be kept confidential, not be shared with
12 any third-party, and used only to administer the settlement.

13 **IV. IMPLEMENTATION SCHEDULE**

14 Accordingly, with good cause shown, the Court hereby approves and orders that the following
15 implementation schedule be adhered to:

16 Last day for Defendant to provide Claims Administrator with Class Member and Aggrieved Employee information	17 Within 14 calendar days after the Preliminary Approval Date
18	
19 Last day for Claims Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	20 Within 14 calendar days after the Claims Administrators’ receipt of Class Members’ information from Defendant
21	
22 Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	23 60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
24	
25 Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	26 Within 14 calendar days after end of the Notice Period
27	
28	

1 2 3 4 5	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
6 7	Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date
8 9 10 11	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after Defendant fund the settlement
12 13 14	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
15 16 17	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
18 19	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of March 24, 2023, at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any

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purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: 12/14/22

By:  Jill Talley
Judge of the Superior Court

JILL H. TALLEY